89-1778

NUMBER _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

L. SHYRL BROWN AND ILA D. Brown,

Plaintiffs, Appellants, Petitioners.

vs

CALVIN GOULD, ALDON J. ANDERSON AND

DAVID SAM,

Defendants, Appellees, Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI

L. Shyrl Brown and
Ila D. Brown
180 North 100 East
Richfield, Utah 84701
Phone: 801-896-5730
in person

QUESTIONS PRESENTED

1. Is the "Federal Employees Liability Reform and Tort Compensation Act of 1988", Public Law 100-694, November 18, 1988, 102 Stat. 4563 (hereafter,102 Stat 4563), constitutional and applicable in this matter?

2. Was this Civil Action unlawfully removed from the Sixth Judicial District Court of Utah (hereafter, Utah Court)?

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AUTHORITIES

1. Reports. The opinions of the lower courts are in the appendix. See above.

2. Jurisdiction. The order of the 10th Circuit was entered January 24, 1990. The petition for rehearing was denied March 23, 1990. This court has jurisdiction under 28 USC 1252 and 28 USC 1254 (1) and (2).

3. Verbatim.

1. The Congress shall have power:
17. To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, drydocks, and other needful buildings. Article I, Section 8, Clause 17, U.S. Constitution.

For purposes of this chapter--
(1) The term "State court" includes the Superior Court of the District of Columbia.
(2) The term "State" includes the District of Columbia.
28 USC 1451.

Section 2 (a)
(7) In its opinion in Westfall v Erwin, the Supreme Court indicated that the Congress is in the best position to determine the extent to which Federal employees should be personally liable for common law torts, and that legislative consideration of this matter would be useful.

(b) Purpose. It is the purpose of this Act to protect Federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the common law torts of Federal employees with an appropriate remedy against the United States.

Section 3.

Section 2671 of title 28, United States Code, is amended in the first full paragraph by inserting after "executive departments," the following; "the judicial and legislative branches,".

Section 6 REPRESENTATION AND REMOVAL.

Section 2679(d) of title 28 United States Code, is amended to read as follows:

"(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall be conclusively establish scope of office or employment for purpose of removal.

Public Law 100-694, 102 Stat. 4563.

Jurisdiction is hereby ceded to the United States in, to and over any and all lands or territory within this state which have heretofore been acquired by the United States by purchase, condemnation or otherwise for military or naval purposes and for forts, magazines, arsenals, dockyards and other

needful buildings of every kind whenever authorized by Act of Congress, and in, to and over any and all lands or territory within this state now held by the United States under lease, use permit, or reserved from the public domain for any of the purposes aforesaid; this state, however, reserving the right to execute its process, both criminal and civil, within such territory. The jurisdiction so ceded shall continue so long as the United States shall own, hold or reserve land for any of the aforesaid purposes, or in connection therewith, and no longer.
Utah Code, 63-8-1.

4. Statement of the Case. NOTICE, 28 USC 2403(a)(b) may apply and was not certified.

A warrant was issued in 1984 by Defendant U.S. Magistrate Calvin Gould seizing real property belonging to Ila D. Brown and private property belonging to L. Shyrl Brown. Defendants Judges Aldon J. Anderson and David Sam refused to vacate the warrant and refused to return the property to Plaintiffs who are the owners of the property.

There never was finding of any liability nor judgment against Plaintiffs severally. We, the owners of the property severally, filed this civil action in the competent Utah Court to compel return of our property and damages.

The civil action was (unlawfully) removed to U.S. District court and dismissed with prejudice on July 11, 1989. Our appeal to the 10th Circuit was denied January 24, 1990. Rehearing was denied March 23, 1990. We have exhausted all other remedy and now Petition this Court for justice and an appropriate order guaranteeing the return of our property and appropriate damages for injury suffered at the hands of Defendants. We seek remand to the Utah Court for its judgment.

The Utah Court is the court of competent jurisdiction being a court of general jurisdiction in Utah, having jurisdiction over the parties and jurisdiction over the land (territory) where the property is located (Richfield, Utah). We can find no ground for U.S. Court jurisdiction and therefore can not state the basis for U.S. District Court jurisdiction.

IS 102 Stat. 4563 UNCONSTITUTIONAL?

The 10th Circuit rules 102 Stat 4563 is frivolous. It refuses to give the statute any force and effect declaring the statute, in fact, unconstitutional. We know of no

decisions by this court or other court pronouncing this statute frivolous, inoperable and unconstitutional. This court should decide the constitutionality and application of this statute.

Can Plaintiffs recover their seized property and damages by civil action? The answer is obviously YES!

> "The court noted that §6331, unlike §7403, does not 'implicate the rights of third parties,' because an administrative levy, unlike a judicial lien-foreclosure action, does not determine the ownership rights to the property. Instead, third parties whose property is seized in an administrative levy 'are entitled to claim that the property has been 'wrongfully levied upon' and may apply for its return either through administrative channels . . . or through a civil action'. Ibid. The Court, in other words, recognized what we now make explicit; that §6331 is a provisional remedy, which does not determine the rights of third parties until after the levy is made, in postseizure administrative or judicial hearings." US v Nat. Bank of Commerce, 472 US 713, 731.

The facts here may seem extraordinary.

Defendant Gould issued a warrant and seized the property but a complaint was never filed nor judgment rendered. Therefore, it was not a lawful procedure under §7403.

Ila D. Brown is actually a third party, there being NO ALLEGATION of deliquency or liability. Yet she has been deprived of her REAL PROPERTY for over 5 years.

L. Shyrl Brown is ALLEGED to be a delinquent taxpayer but no court has ever found any tax liability. I am not a taxpayer. I do not have a tax liability. No tax liability has been proven. Defendants have denied me my property and rights to my property for over 5 years.

In any event, this is a post-seizure judicial civil action to compel return of our property severally and damages suffered, as a matter of law. This civil action has long been a remedy in this country and is supported by this court in Nat. Bank of Commerce, supra.

Is the United States a party? The United States is NOT named a party in the complaint. The United States was NOT lawfully joined at any time. Defendants failed to follow the procedure established by Congress in

102 Stat. 4563 and were never certified as acting within the scope of their office by the Attorney General in 102 Stat 4563, Section 6(2). Defendants did act outside of their scope of office.

The property was located in Richfield, Sevier County, Utah, outside of the jurisdiction of U.S. District court.

Was this civil action unlawfully removed from the Utah Court? We state YES!. This civil action should be remanded to the Utah Court for judgment. There is no lawful ground for removal. The Utah court is the competent court to decide the ownership of the property.

The United States is not a party (See argument immediately above). There is no diversity of citizenship. The property was located in Richfield, Sevier County, Utah.

Federal jurisdiction within the boundaries of Utah is very limited. The Utah Legislature recently clearly and in great detail defined

the limits of federal jurisdiction within its borders in Utah Code, 63-8-1 to 63-8-6. 63-8-1 is found verbatim at page 2. The other sections speak of Fort Douglas, Fort Duchesne; Tooele, Juab and Weber Counties; and the limits of jurisdiction with land descriptions in those counties. NO FEDERAL JURISDICTION IS RECOGNIZED IN SEVIER COUNTY.

Federal jurisdiction within Utah is very limited. One of three conditions must be demonstrated for federal jurisdiction to exist.

a. Jurisdiction under Article I, Section 8, Clause 17, U.S. Constitution; Utah Code 63-8-1, or

b. Jurisdiction ceded to the United States and the United accepting jurisdiction as provided in Utah Code 63-8-2 to 63-8-6, or

c. Jurisdiction reserved to the United States in the Enabling Act of 1894.

None of these conditions exist and NONE HAVE BEEN ALLEGED BY DEFENDANTS. The property seized is not within the scope of office

of Defendants. Neither the Utah Court nor this civil action is within the jurisdiction of the United States.

Removal to federal court is an extremely limited authority and clearly stated in 28 USC 1451, See p. 1 above. The language is clear and unambiguous but found frivolous by the 10th Circuit.

The Utah Court is not the Superior Court of the District of Columbia. Utah is not the District of Columbia. The clear language of §1451 has no reference to the Utah Court. Further, Congress has no authority to enact any law to compromise or usurp the jurisdiction of the Utah Court. This is made clear in §1451.

Congress may legislate with regard to its own courts but the Utah Court is not a United States court nor within United States jurisdiction. The Utah Court is a lawfully established court of the sovereign State of Utah and should not be harassed, intimidated or interfered with by federal employees.

10TH CIRCUIT ERRORS AND BIAS in its order of January 24, 1990.

1. "litigate and relitigate". L. Shyrl Brown did attempt to obtain an order vacating the warrant. That is the limit of "litigate and relitigate."The merits have never been litigated. Ila D. Brown has never appeared in any court prior to the Utah Court and therefore her claims have never been litigated.

2. "tax congroversy". Please NOTICE, the 10th Circuit states tax controversy not TAX LIABILITY. There is no TAX LIABILITY. There is no ground to deny us our property. NOTICE also, CONTROVERSY itself recognizes there is no judgment which is true - NO JUDGMENT. Courts are for the purpose of deciding controversies, not perpetuating them as the 10th Circuit has done in this matter.

3. The 10th Circuit states, "Sanctions have previously imposed against them both in district court and in this court..." THAT IS AN OUTRIGHT LIE. Ila D. Brown has

not previously appeared in the 10th Circuit and therefore sanctions could not have been lawfully imposed upon her. Sanctions were imposed upon L. Shyrl Brown which is extremely unusual because I am the owner of the property and there should be no penalty of this kind for owning seized property.

4.- This suit is to compel the Defendants to return our property unlawfully taken - a COMMON LAW RIGHT. Nowhere will this court find a judicial determination of any tax liability on the merits.

5. The 10th Circuit claims the Defendants are absolutely immune. The law relative to federal employees (including judicial employees) has changed since Stump and Van Sickle which the 10th Circuit relies upon. After this court's decision in Westfall v Erwin, 56 LW 4087 and enactment of 102 Stat. 4563, those cases are no longer reliable. Obviously, the Defendants acted outside of their scope of office. Neither the Attorney General nor any court has certified they did.

It appears that 102 Stat. 4563 was enacted to prevent the precise act which the 10th Circuit decision promotes. That is, denying injured Plaintiffs redress for injury suffered by unlawful acts of government employees. The intent of 102 Stat. 4563 appears clear. If Defendants were acting within the scope of their office when the Plaintiffs were injured, the United States would become party defendant IF THE PROCEDURE WAS FOLLOWED. If Defendants acted outside of the scope of their office they are individually liable for the injuries.

It appears extremely important for this court to settle the issues herein to more clearly define the limitations of Defendant's scope of office so that this problem will not arise again.

This court should rule upon 102 Stat. 4563. It is the duty of the court to declare the law, not ignore it. Ignoring the law or finding it frivolous is a dangerous precedent which can not be allowed. We Plaintiffs

severally have the right to our own property and the right to this civil action to recover our own property severally in a court of competent jurisdiction - the Utah Court.

Therefore, we believe this civil action should be remanded to the Sixth Judicial District Court of Utah for speedy decision, the return of our property and damages. In the alternative, this court should act in such a manner to see to it our property is returned to us and we are compensated for the injuries we have suffered.

APPENDIX

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, L. Shyrl Brown, et al, Plaintiffs-Appellants, vs., Calvin Gould, et al., Defendants-Appellants, No. 89-4105, D.C. No 89-C-155J. Date January 24, 1990. ORDER AND JUDGMENT, Before MCKAY, ANDERSON and BALDOCK, Circuit Judges.

After examining the briefs and appellate records, this panel has determined unanimously that oral argument would not materially

assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir R. 34.1.9. The causeis therefore ordered submitted without oral argument.

As the attached excerps from the record in this case disclose, the appellants have continued, through variations on the single theme, to litigate and relitigate their federal tax controversy to the point of abuse of the judicial process. Sanctions have previously been imposed against them both in the district court and in this court and those sanctions remain unpaid.

Undeterred, the appellants filed suit in state court against three federal judges based on actions taken by these judges relative to the underlying tax controversy. That suit was properly removed to federal court and dismissed. Appellants appeal that dismissal.

Appellants' convoluted arguments, both jurisdictional and otherwise, are wholly without merit. Their suit is deficient

for multiple reasons, not the least of which is that these judges are absolutely immune from suit. Stump v Sparkman, 435 US 349, 355-57 (1978); Van Sickle v Holloway, 791 F2d 1431, 1434-35 (10th Cir. 1986).

The appellees have not asked for sanctions to be imposed in this case, but on what is presently before us, this appeal is frivolous and vexatious. Appellants are granted 15 days within which to show cause, in writing, why monetary sanctions should not be imposed. Braley v. Campbell, 832 F2d 1504 (10th Cir. 1987), and why the clerk of this court should not be directed to refuse to file any further appeals in suits filed by L. Shyrl Brown and Ila Del Brown relating to this tax controversy, see Tripati v Beaman, 878 F2d 351, (10th Cir. 1989), unless; (a) they provide satisfactory proof that they have paid all sanctions previously imposed by this court, plus any outstanding bills for costs; or(b) in the absence of such proof, upon an order of a judge of the Tenth

Circuit permitting such filing on the grounds that the appeal is not frivolous or an improper attempt to further relitigate aspects of their federal tax controversy which are res judicata.

The judgment of the district court is AFFIRMED. The mandate shall issue forthwith. ENTERED FOR THE COURT Stephen B. Anderson, Circuit Judge

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United States Court of Appeals for the Tenth Circuit, L. Shyrl Brown, et al, v Calvin Gould, et al, Defendants-Appellees. No. 89-4105. Order. Filed March 23, 1990.

Upon consideration of appellants' petition for rehearing, together with response to show cause order, and appellants' support for rehearing, the court denies rehearing.

Further, the court finds that this appeal was patently frivolour and, under Fed. R. App. P. 38, the courts awards double costs to the appellees.

Within 14 days of the date of this order

appellees shall file an itemized and verified bill of costs with proof of service. Entered for the court. Robert L. Hoecker, Clerk.

In the United States District Court for the District of Utah, Central Division, L. Shyrl Brown, et al., Plaintiffs, v Calvin Gould, et al., Defendants. Civil No. 89-C-155J, Utah Civil Number 10419, ORDER.

This matter came on for hearing on June 8, 1989 at 8:30 a.m. on the defendants' Motion to Dismiss or in the Alternative For Summary Judgment. Plaintiffs appeared pro se; defendants appeared by Assistant United States Attorney Glen R. Dawson.

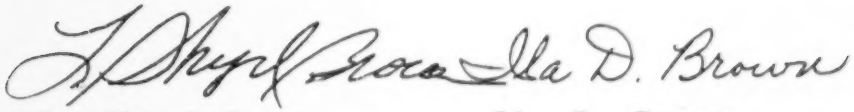
Upon a complete review of the file in this matter and after hearing statements of the plaintiffs and defendants' counsel, and being fully advised, it is hereby

ORDERED, ADJUDGED, and DECREED that plaintiffs' Complaint be and the same hereby is dismissed with prejudice.

Dated this 11 day of July, 1989.

BY THE COURT: BRUCE S. JENKINS, Chief Judge,

United States District Court.



L. Shyrl Brown Ila D. Brown

Petitioner, in person Petitioner, in person